

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

James E. Johnston,	:	
Plaintiff	:	Case No. 2:08-cv-736
v.	:	Judge Frost
Sidney T. Lewis,	:	Magistrate Judge Abel
Defendant	:	

Initial Screening Report and Recommendation

This matter is before the Court on Defendant Sidney T. Lewis' motion to proceed *in forma pauperis* without prepayment of fees and costs and for an initial screening. (See Docket Entry 1.)

Defendant's motion to proceed without prepayment of fees and costs is **DENIED without prejudice to re-file**. Defendant Lewis is **ORDERED** to fill out, sign, and return to the Clerk of Court the attached Declaration in Support of Request to Proceed without Prepayment of Fees and Costs within **Thirty (30) Days of the Date of this Order**.

This matter is also before the Magistrate Judge for an initial screening. The matter originated in Franklin County Court of Common Pleas. James E. Johnson petitioned the Common Pleas Court for a Civil Stalking or Sexually Oriented Offense Protection Order against Sidney T. Lewis. (Doc. 1-4, p. 6.) On July 16, 2008, an *ex parte* hearing was held and the Common Pleas Court issued the protection order to be effective until August 9, 2008. (*Id.* at p. 3.) A full hearing was scheduled for July 29,

2008. (*Id.* at p. 5.) On July 29, Lewis filed a notice of removal with this Court.

Removal of cases from state court based on federal question jurisdiction, 28 U.S.C. § 1331, is governed by the well-pleaded complaint rule. *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808 (1986). The rule makes “the plaintiff the master of the claim.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Federal defenses to a complaint do not normally render it removable to federal court. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). In the current context, State law claims are removable under only two circumstances:

when Congress expressly so provides, such as in the Price- Anderson Act . . . or when a federal statute wholly displaces the state-law cause of action through complete pre-emption.

Beneficial National Bank v. Anderson, 539 U.S. 1, 7-8, 8 n.3 (2003). Neither circumstance applies here. If a party has a claim or defense based on federal law, the state court will adjudicate it. “State courts, like Federal courts, have a constitutional obligation to safeguard personal liberties and to uphold Federal law.” *Stone v. Powell*, 428 U.S. 465, 494 at n.35 (1976) (citing *Martin v. Hunter's Lessee*, 1 Wheat. 304, 341-44, 4 L.Ed. 97 (1816)). See *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 275-76 (1997); *California v. Grace Brethren Church*, 457 U.S. 393, 417 at n.37 (1982); *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982); *Kish v. Michigan State Bd. of Law Examiners*, 999 F.Supp. 958, 963-64 (E.D. Mich. 1998).

Accordingly, it is **RECOMMENDED** that this action be **REMANDED** to Franklin County Court of Common Pleas.

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. See 28 U.S.C. §636(b)(1)(B); Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Mark R. Abel
United States Magistrate Judge

The fee for filing a civil complaint in the U. S. District Court is \$350 plus the fees of the U.S. Marshal authorized in 28 U.S.C. §1921. If you are unable to pay those fees, you may execute the following form, asking the Court to allow you to proceed without the prepayment of fees.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

_____, :
Plaintiff : Case No.
v. : Non-Prisoner Declaration in
: Support of Request to
: Proceed without Prepay-
_____, : ment of Fees and Costs
Defendant :

I, _____, am the plaintiff in the above-entitled case. In support of my motion to proceed without being required to prepay fees or costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security therefor; and that I believe I am entitled to redress.

I declare that the responses which I have made below are true.

1. Are you presently employed? _____ Yes _____ No

a. If the answer is yes, state the amount of your salary and give the name and address of your employer.

Salary - Wages

() yearly
() monthly
\$_____ () bi-weekly
() weekly

Employer's name _____

Address _____

b. If the answer is no, state the date of last employment and the amount of the salary you received.

Date of last employment

Salary - Wages

() yearly
() monthly
\$_____ () bi-weekly
() weekly

2. Have you received within the past 12 months any money from any of the following sources?

a. Business, profession, or form of self-employment?

_____ Yes _____ No

b. Rent payments, interest or dividends? _____ Yes _____

No

c. Pensions, annuities, or life insurance payments?

_____ Yes _____ No

d. Gifts or inheritances? _____ Yes _____ No

e. Social security, supplemental security income, AFDC, general relief? _____ Yes _____ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past 12 months.

3. Do you own any cash or do you have money in a checking or savings account? _____ Yes _____ No

If the answer is yes, state the total value owned.

Cash \$_____

Checking \$_____

Savings \$_____

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings or clothing)? _____ Yes _____ No

If the answer is yes, describe the property and state its approximate value.

<u>Make</u>	<u>Value</u>
Autos _____	\$ _____
_____	\$ _____
Stocks _____	\$ _____
_____	\$ _____
Bonds _____	\$ _____
_____	\$ _____
Notes _____	\$ _____
Real Estate _____	\$ _____
Mortgage	\$ _____

5. List the persons who are dependent upon you for support; state your relationship to those persons; and indicate how much you contribute toward their support.

<u>Name</u>	<u>Relationship</u>	<u>Contribution</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

6. You are single ____, married ____, widowed ____, separated ____, or divorced ____.

If you are married, is your spouse employed? ____ Yes ____
No

If yes, how much does your spouse earn?

Salary - Wages

() yearly

() monthly

\$_____ () bi-weekly
() weekly

7. List all your creditors, including banks, loan companies, credit companies, charge accounts, medical bills, etc.

<u>Payment</u>	<u>Creditors</u>	<u>Total Debt</u>	<u>Mo.</u>
Apt. or Home _____		\$_____	\$_____
_____		\$_____	\$_____
_____		\$_____	\$_____
_____		\$_____	\$_____
_____		\$_____	\$_____

I declare under penalty of perjury that the foregoing is true and correct.

Signed this _____ day of _____, 20____.

Signature of Plaintiff

